IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/06/2004

CORAM

THE HON'BLE MR.JUSTICE V.KANAGARAJ

Tr.C.M.P.No.19024 Of 2003
AND
C.M.P.No.19025 of 2003

Baby Chitra ... Petitioner

-Vs-

K.Radhakrishnan ... Petitioner

Petition filed under Section 24 of the C.P.C. for the relief as stated therein.

!For petitioner --- Mr.K.Nandagopal

^For respondent --- Mr.Azhaguraman

:O R D E R

The above petition has been filed praying to withdraw O.P.No.1456 of 2003 from the file of the Principal Family Court, Chennai and transfer the same to the Family Court, Madurai.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for both, it comes to be known that the parties are wife and husband and that the respondent herein has filed the O.P. No.1456 of 2003 on the file of the Principal Judge, Family Court, Chennai seeking divorce from his wife/the petitioner herein and during pendency of the said proceedings, the wife has come forward to file the above transfer C.M.P. on grounds that she was thrown out of the matrimonial home and now she is residing with her parents at Madurai along with her four years old child and she has to travel to Chennai from Madurai to attend every hearing during which time she needs assistance from her parents and having no source of income, she is depending on her parents for her day-to-day expenses and on such grounds, she would pray for the transfer of the said case.

3. The learned counsel appearing on behalf of the respondent, though has no objection to transfer the case from Chennai to Madurai as sought for, he has very serious objection to offer regarding the averments and the allegations made in the petition for transfer. Of course, they are subject to an order passed in the main O.P. and the parties could contest the same in the main O.P. itself. So far as the transfer of the main O.P. filed by the

husband in the Family Court, Madras seeking divorce is concerned, it is only desirable to transfer the same to the Family Court, Madurai since the petitioner is the permanent resident of Madurai and it is also not fair on the part of the Court to order a lady to travel such a long distance for showing appearance on each and every hearing and the feasibility is only to have the case decided by a Court of her own place and hence it is only desirable to transfer the case from Family Court, Chennai to Madurai Family Court, as it is prayed for on the part of the petitioner.

4. At this juncture, it is worth mentioning the judgment of the Apex Court rendered in Sumita Singh v. Kumar Sanjay reported in AIR 2002 SC 396, wherein it is held:

"This is a transfer petition by the wife. She seeks the transfer of matrimonial proceedings filed by the husband against her in Ara, Bhojpur to Delhi. It is her case that she is now living and working in Delhi and that she would be unable to travel up and down from Delhi to Ara, a distance of about 1100 Kilometers from Delhi, to defend the matrimonial proceedings. She also states that she has no one with whom she can stay in Ara because her parents are residents of Gurgaon."
"Learned counsel for the husband states that the wife is an educated woman who is doing very well and can, therefore, travel to Ara while the husband is unemployed."
"It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute."

Therefore, it is clear that it is the convenience of the wife that must be given the utmost importance. Considering the facts and circumstances and in view of the judgment of the Apex Court cited supra, this petition for transfer is ordered as prayed for by the petitionerwife.

5. Though no petition has been filed on behalf of either side, still, a mention is made on the part of the learned counsel for the petitioner to the effect of ordering a joint trial of this O.P. filed by the husband for divorce with that of M.C.No.14 of 2004 filed by the wife on the file of the Family Court, Madurai seeking maintenance. Since the subject matters are connected ones and the parties are also connected to the same subjects, it is only desirable to hear and decide both the above proceedings by one and the same Court and hence the following order:

In result,
(i) the above Transfer C.M.P. is allowed.
(ii) The case in O.P.No.1456 of 2003 pending on the file of the Principal Family Court, Chennai is hereby ordered to be withdrawn from its file and transfer the same to the Family Court, Madurai.

iii) The Family Court, Madurai is directed to conduct a joint trial of the above O.P. and M.C.No.14 of 2004 pending on its file.

However, in the circumstances of the case, there shall be no order as

to costs.

Consequently, C.M.P.No.19025 of 2003 is closed.

Index: Yes
Internet: Yes
Rao

To
1. The Principal Judge,
Family Court, Chennai.

2.The Presiding Officer,
Family Court, Madurai.